<u>REMARKS</u>

This Amendment is being submitted concurrently with a Request for Continued Examination and in response to the Final Office Action dated September 17, 2007. Claims 1 through 7 and 10 have been amended. Claim 9 has been cancelled and new claims 17 and 18 added. New claim 18 recites limitations that were deleted from claim 5 while new claim 17 is supported by paragraph no. [0024]. Thus, neither claim 17 nor 18 introduces any new matter. The application now includes Claims 1 through 8 and 10 through 18, with claim 1 being the only sole independent claim. Favorable reconsideration of the application, as amended, is respectfully requested.

Paragraph 0027 of the specification has been amended to correct several minor typographical errors.

In the Final Office Action, the Examiner rejected claims 1, 2, 7, 11 and 13-16 under 35 U.S.C. §103(a) as being unpatentable over Published U.S. Application No. 2002/0141355 to Struhsaker et al. in view of Published U.S. Application No. 2004/0218604 to Porter. The Examiner stated that the Strusaker et al. reference disclosed all of the limitations recited in claim 1 except for identifying the usage level of a lower service class, comparing the lower service class usage level to the capacity of a backbone network and then adjusting the access of the lower service class to allow sufficient capacity for transport of messages of the other class. The Examiner further stated that the Porter reference teaches adjusting the bandwidth of the lower class to maintain the total available bandwidth. The Examiner then concluded that it would have been obvious to adjust the bandwidth in the Strusaker et al. reference as taught by the Porter reference.

Applicants have amended Independent Claim 1 to recite a method of controlling service access to an internet protocol backbone network that includes identifying the usage levels of a lower service class and of another higher service class. Amended Claim 1 also recites comparing the usage level of the lower service class to the capacity of the backbone network required to provide service to the other class. Amended Claim 1 further recites adjusting the traffic control devices at access points to the backbone network to decrease access of the lower service class to provide

sufficient capacity in the network for transport of messages for the other class with the decrease in access occurring only when there is insufficient capacity in the network for transport of messages for the other class. Applicants believe that amended claim 1 is fully supported by paragraph nos. [0024], [0025] and [0032]. Thus, the amended claim 1 adds no new matter.

Applicants have carefully reviewed the Porter reference and note that paragraph no. [0027] of the reference states that:

> During conditions of system overload, when the aggregate bandwidth sought by users exceeds the total bandwidth available, the *system overloading must also be taken into consideration when allocating to users amounts of data for transmission. This does not apply to class 1, where users must always be allocated bandwidth as agreed with the system operator.* This limits the number of class 1 users to which the system operator can sell guaranteed bandwidth. In classes 2 and 3, however, as system overloading increases, the system data analyzer 18 causes the allocator 16 to allocate decreasing amounts of data to each user in the active pool queues. To do this an assessment is made of the currently available bandwidth and the users queued in classes 2 and 3, including the levels of service purchased by each of these users. *The total bandwidth available is the total system bandwidth minus the bandwidth already allocated to the users in class 1.* The system then evaluates the aggregate bandwidth required to serve the users queued in classes 2 and 3 and (given that the system is overloaded) calculates by how much the bandwidth requested in classes 2 and 3 must be reduced in order to match the total bandwidth available. (Emphasis Added.)

Additionally, the Porter reference states, in paragraph no. [0026] that:

> Thus, *if the user is in class 1 a predetermined amount of bandwidth is guaranteed and therefore the amount of data allocated to the user will depend only on the level of service purchased* from the system operator. By contrast, if the user is in class 2 or 3, the amount of data allocated will depend on the other factors, such as the number of queued and the current overloading status of the communication system as well as the level of service purchased from the system operator. (Emphasis Added.)

Based upon the above disclosures, applicants believe that the Porter reference teaches assigning a fixed amount of bandwidth, or access, to class 1 users that is guaranteed to be available and then dividing the remaining available bandwidth between class 2 and 3 users. Thus, the Porter reference discloses a fixed relationship between the bandwidth needs of class 1 users and the other users. Amended independent claim 1, on the other hand, describes a dynamic relationship where the actual usage needs of each class of service are identified and the accessibility of a lower class user is decreased only when there is insufficient bandwidth capacity available for the other class of user. Thus, under certain conditions, there would be no decrease in the accessibility of the lower class of user to the network and, when there is little usage required by the other class of user, the accessibility available for the lower class user would actually increase. Indeed, by disclosing that the bandwidth allocated to the higher class user is fixed, applicants believe that the Porter reference actually teaches away from the dynamic method for access allocation that is recited in amended independent claim 1. Thus, even if the Porter reference is combined with the Struhsaker et al. reference, applicants believe that the combination also will not teach the dynamic method for access allocation that is recited in amended claim 1. Accordingly, applicants believe that amended independent claim 1 is patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claim.

Regarding claims 2 and 7, the claims are dependent upon amended independent claim 1 and include all of the limitations recited therein. Accordingly, for the reasons given above, applicants also believe that claims 2 and 7 are patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claims.

Regarding claim 11, the Examiner stated that both the Struhsaker et al. and Porter references fail to teach that the lesser service class includes messages that have been selectively degraded. The Examiner further stated that it is well known in the art that messages in a lower service class are degraded. The Examiner then concluded that it would have been obvious to use the lesser service class that includes messages that have been selectively degraded in the method taught by the Struhsaker et al. and

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Porter references. Applicants do not understand how the knowledge that messages in a lower service class are degraded would imply <u>selective</u> degradation as messages, as may occur when the present invention is practiced. Degradation of messages in a lower service class implies all such messages are degraded. However, claim 11 specifically recites that messages are selectively degraded. Selective degradation means that some of the messages are degraded, depending upon the adjustment of accessibility recited in step (f) of amended claim 1, from which claim 11 depends. This is quite different from degradation of all messages, as implied to be known in the art. Accordingly, applicants do not believe that it would be obvious that a lesser service would include selective degradation of the message. Additionally, as mentioned above, claim 11 is dependent upon amended independent claim 1 and includes all of the limitations recited therein. Accordingly, for the reasons given above, applicants believe that claim 11 is patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claim.

Regarding claim 15, the Examiner stated that the Struhsaker et al. reference discloses a traffic control device that includes at least one media gateway, as shown in Fig. 1, box 104 of the reference. However, there is no box 104 in Fig. 1 of the Struhsaker et al. reference. Nevertheless, claim 15 is dependent upon amended independent claim 1 and includes all of the limitations recited therein. Accordingly, for the reasons given above, applicants believe that claim 15 is patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claim.
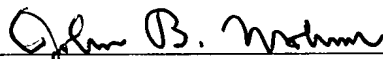
Regarding claims 2, 7, 13, 14 and 16, the claims are dependent upon amended independent claim 1 and include all of the limitations recited therein. Accordingly, for the reasons given above, applicants also believe that claims 2, 7, 13, 14 and 16 are patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claims.

In the Final Office Action, the Examiner also rejected claims 3 through 6, 9 and 10 under 35U.S.C. §103(a) as being unpatentable over the Struhsaker et al. and Porter references in view of Published U.S. Application No. 2003/0123388 to Bradd.

However, claims 3 through 6, 9 and 10 are dependent upon amended independent claim 1 and include all of the limitations recited therein. Accordingly, for the reasons given above, applicants also believe that claims 3 through 6, 9 and 10 are patentable over the art of record and respectfully request that the Examiner withdraw his rejection of the claims.

In view of the amendments and above remarks, it is believed that the application is in condition for allowance.

Respectfully submitted,

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